

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF MARCH 16, 2005**

**REGULAR MEETING**

**9:00 A.M.**

**MARCH 16, 2005**

**PRESENT:**

<b>COMMISSIONERS:</b>	<b>Bob Colven, Vice Chairman</b>	<b>Paul J. Luellig Jr., Alternate</b>
	<b>Kimberly Cox</b>	<b>Mark Nuaimi</b>
	<b>James V. Curatalo, Alternate</b>	<b>A.R. "Tony" Sedano, Alternate</b>
	<b>Josie Gonzales, Alternate</b>	<b>Diane Williams</b>
	<b>Dennis Hansberger</b>	

**STAFF:**

**Kathleen Rollings-McDonald, Executive Officer**  
**Clark H. Alsop, Legal Counsel**  
**Jeffrey Goldfarb, Special Legal Counsel**  
**Samuel Martinez, LAFCO Analyst**  
**Debby Chamberlin, Clerk to the Commission**

**ABSENT:**

**COMMISSIONERS:**

**Paul Biane, Chairman**  
**Richard P. Pearson**

**REGULAR SESSION - CALL TO ORDER - 9:05 A.M.**

Vice Chairman Colven calls the regular session of the Local Agency Formation Commission to order and he leads the flag salute.

Vice Chairman Colven requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

**APPROVAL OF MINUTES FOR REGULAR MEETING OF FEBRUARY 16, 2005**

Vice Chairman Colven calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Sedano moves approval of the minutes as presented, seconded by Commissioner Williams. Vice Chairman Colven calls for a voice vote on the motion and it is as follows: Ayes: Colven, Cox, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead) and Pearson (Sedano voting in his stead).

**CONSENT ITEMS**

LAFCO considers the items listed under its consent calendar. Vice Chairman Colven states that the consent calendar consists of: (1) approval of the Executive Officer's expense report; (2) approval of payments as reconciled for the month of February, 2005 and noting cash receipts; and (3) two service contracts. A Visa Justification for the Executive Officer's expense report, and staff reports for the reconciled payments and the service contracts, have been prepared and a copy of each is on file in the LAFCO office and is made a part of the record by its reference herein. Consent calendar items have been advertised as required by law through publication in The Sun, a newspaper of general circulation.

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In addition, the service contracts were advertised in the Loma Linda City News (SC#248) and the Inland Valley Daily Bulletin (SC#247), newspapers of general circulation in the affected areas.

The service contract proposals are summarized as:

LAFCO SC#247-City of Upland Sewer Service Agreement No. SSA-2005-01-01  
(APN 1003-091-69)

LAFCO SC#248-City of Loma Linda Irrevocable Agreement to Annex for Water  
and Sewer Service (APN 0293-032-01)

The staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled and take the following actions for the service contracts: (1) certify that SC#247 and SC#248 are statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption for each proposal; (2) approve SC#247 authorizing the City of Upland to extend sewer service outside its boundaries to APN 1003-091-69; (3) approve SC#248 authorizing the City of Loma Linda to extend water and sewer service outside its boundaries to APN 0293-032-01; and (4) adopt LAFCO Resolutions Nos. 2864 and 2865 respectively, outlining the Commission's findings, determinations and approval of the service contracts.

Vice Chairman Colven asks whether there is anyone present wishing to discuss any of the consent calendar items. There is no one.

Commissioner Gonzales moves approval of the consent calendar, seconded by Commissioner Sedano. Vice Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Cox, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead) and Pearson (Sedano voting in his stead).

**DISCUSSION ITEMS**

**CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2919; AND (2) LAFCO 2919 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT - CONTINUE TO JUNE 15, 2005**

LAFCO conducts a public hearing to consider a service review and sphere of influence update for the San Bernardino Valley Water Conservation District. Notice of this hearing was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that this proposal was initiated by the Commission in January 2003 and that this is the final agency to be discussed in the East Valley agency reviews. She shows a map on the overhead display of the San Bernardino Valley Water Conservation District (hereafter "the SBVWCD" or "the District") and says it includes the eastern portion of the East Valley area and that its sphere of influence includes the existing District boundaries and a peninsula of land running through it comprised generally of the Santa Ana River. She notes that there are only two Water Conservation Districts in this County—the Chino Basin Water Conservation District (WCD) in the West End, which is overlaid entirely by the Inland Empire Utilities Agency, and the SBVWCD, which is overlaid by portions of cities. She shows maps which outline the portions of the cities overlaying the SBVWCD and the two independent water districts that overlay the District—the East Valley Water District and, in the very eastern side of the District, a small portion of the Yucaipa Valley Water District. She says that the SBVWCD was formed in 1931, immediately following implementation of WCD law, as a means "to protect against excessive export of the local surface water by downstream agencies" and says the District operates recharge facilities in the Santa Ana River and

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Mill Creek. Ms. McDonald says the services that can be offered by a WCD are outlined in the staff report and she reports that in 1993, the Commission was involved with the SBVWCD through the review and expansion of the District's boundaries by approximately 2,929 acres (LAFCO 2751). She says the controversy over that proposal, related to the District's implemented groundwater charge, resulted in a modification to the boundaries to exclude the area of the District's sphere within the Santa Ana River comprising 1,980 acres.

Ms. McDonald states that the District provided a very thorough response in 2003 to the factors and findings required for a service review. She says that the Commission has not been provided with all the materials received from the District but has been provided a copy of the District's survey response and the appendix materials outlined in the staff report. She says the staff report provides a summary of the major points of consideration in the response provided by the SBVWCD and also identifies questions of staff.

Ms. McDonald discusses the first factor—Infrastructure Needs and Deficiencies—reporting that the SBVWCD's infrastructure was developed in the 1930's and is a series of percolation basins, canals and diversion facilities, which are in good condition according to the District's documents. She says the District has been diverting water from the Santa Ana River and Mill Creek for spreading and percolation within the District facilities for recharge of the Bunker Hill Basin for more than 90 years and discusses the District's efforts to restore its percolation basin in the "Borrow Site" for the Seven Oaks Dam.

Regarding Financial Constraints and Opportunities, Ms. McDonald says the SBVWCD indicates that it is in sound financial condition, with limited debt and significant reserves, and has a "pay as you go" policy. She says the Commission has been provided with a copy of the District's 2003-04 Audit Report, which identifies reserves for the District at that time of \$8.2 million, \$5 million of which was provided as an advance for future royalties on mining interests in the Santa Ana River. She says the District has extensive leases for aggregate mining in the Santa Ana River. She says the questions of staff related to the financial information position of the District are outlined in the staff report. She discusses that these questions relate to some one-time expenses identified for operations; expenses of the Board of Directors; and the fact that no mention is made in the Audit Report of an Appropriations Limit for the District.

Regarding the third factor—Cost Avoidance Opportunities and Shared Facilities Opportunities—Ms. McDonald says that much of the District's activities have been projects with other agencies. These projects are outlined in the staff report and include: 1) Upper Santa Ana River Wash Land Management and Habitat Conservation Plan; 2) Santa Ana River-Mill Creek Cooperative Water Project (the Exchange); 3) High Groundwater Mitigation Project; and 4) Drought Mitigation Project.

Ms. McDonald discusses the fourth factor—Government Structure Options—and explains that the District was originally established in 1931 by election; that it became effective January 4, 1932 and took over the assets of its predecessor, the Water Conservation Association in the Santa Ana River; and that in 1935, it acquired the assets of the East Lugonia Mutual Water Company to provide for water spreading and percolation within the Mill Creek area. She reports that two other agencies that are also authorized to provide water conservation services overlay the boundaries of the SBVWCD. The first is the San Bernardino Valley Municipal Water District (hereafter SBVMWD), which she says was created in 1954 and is also the watermaster for the 1969 Judgment. She says the SBVMWD has the responsibility to maintain a certain level of water within the area. She says the San Bernardino County Flood Control District, which was formed Countywide in 1939, also is authorized water conservation services; that it established six separate zones to manage flood control; and that the SBVWCD primarily overlays Zones 2 and 3. Ms. McDonald says the SBVWCD has indicated that it does not believe that consolidation is appropriate and would require an election of the people within its District. She explains that AB 2067, which took effect on January 1, 2005, changed the structure for review of a consolidation and removed the criteria that the districts to be consolidated must be formed under the same principal act, which was not the case when the SBVWCD prepared its response to the service review update in 2003. She reports that one of the staff's recommendation is that the issue of consolidation be addressed with the SBVWCD and its customer agencies. However, she says if the Commission does not wish to consider consolidation, staff feels that since the District's objective is to recharge and conserve water in the Bunker

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Hill Basin, its sphere should be expanded to encompass the entire Bunker Hill Basin, and not just the eastern end of the Basin.

Ms. McDonald discusses the fifth factor—Local Accountability and Governance—and says that since the SBVWCD participates in the general tax levy, and the District's name does not appear on tax bills, most people are not aware of its existence or that they pay property taxes to the District. She says the District indicated that its primary customers are other water producers and not the people who are required to elect the District's seven Board members. She says the staff report outlines the elections conducted by the District during the past 20 years, noting that of the seven divisions, only three have held elections.

Ms. McDonald says that according to the "Exhibit A-Listing of Special Districts Functions and Services", the currently authorized function and service of the District is water conservation. She notes that the District's latent powers are also outlined in the staff report. She says it is not clear what the definition of water conservation was intended to be and says staff is recommending that the Commission update the District's functions and services as listed in the staff report. Ms. McDonald says staff agrees with the SBVWCD that it performs a much needed service, but she says the question is whether it is most appropriate that there be a single agency overlaying the entire Bunker Hill Basin to perform this service and whether there should be a consolidation of the SBVWCD and the SBVMWD, or the expansion of the sphere of the SBVWCD.

Ms. McDonald says the four factors for a sphere of influence review are outlined in the staff report. She discusses the fourth factor—the existence of any social or economic communities of interest in the area—and says staff believes that, because of the regional nature of the District, the community of interest is the Bunker Hill Basin. She asks whether the Commission believes the sphere of the SBVWCD should be expanded to encompass all of the Bunker Hill Basin; whether it wants to look at the issue of consolidation; or whether it believes that the SBVWCD has provided sufficient information to have its existing sphere affirmed. Ms. McDonald says the staff recommendation provides two alternatives. She says if the Commission believes the questions of staff are appropriate, the staff recommendation is that the hearing be continued so that the questions can be reviewed with the SBVWCD and the water delivery entities it overlays. However, she says if the Commission believes the information provided by the District is sufficient and that affirmation of its existing sphere is appropriate, that recommendation is also outlined in the staff report and includes deferral of adoption of the resolution of approval to the April hearing.

Vice Chairman Colven comments that there seem to be more questions than answers and says Ms. McDonald raises an interesting point that people are not aware they are paying taxes to this agency. Ms. McDonald responds that the process for service reviews and sphere updates has been very beneficial as an educational process and that people are learning about the agencies that provide them service.

Commissioner Hansberger comments that legislation grants power and authority to entities but does not give a lot of direction as to who is supposed to do which job. He points out that the job of water conservation has always been an incidental function of the Flood Control District because there are other agencies doing that task and the Flood Control District does not have expanded resources to do water conservation. He says they should discuss the division of service and what is in the best interest of the public as to which agency should provide the service. Ms. McDonald says that is why she outlined the sequence of the creation of the three agencies with authority to do water conservation--to show the layering that has taken place. She notes that the SBVWCD is authorized to do flood control and says that in many parts of the State, WCDs do flood control. She points out that the Chino Basin WCD primarily recharges the Basin through the use of County Flood Control facilities. Commissioner Hansberger discusses that the District has a series of percolation basins that are not a part of the flood control system and says there are a whole series of small ponds cascading down the Mill Creek area that are percolation basins operated by the SBVWCD. He says the Commission should listen to the District and citizens today but says these issues that have been raised invite a further look before this matter is resolved. He says from what he has seen, the SBVWCD does a good job and he has nothing but compliments for the District, but he adds that does not mean that ultimately that is "the right way to get

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there". Ms. McDonald states that one benefit of consolidation is that it merges the two districts and that the employees will be merged; and she notes that the Commission can expand the membership of the successor agency.

Commissioner Hansberger comments that the Santa Ana River is not within the SBVWCD's boundaries. Ms. McDonald responds that is correct, and says that in 1993 when the District proposed to annex the balance of its sphere, that was objected to by the City of Riverside, the Riverside Highland Mutual Water Company, the Meeks and Daily Water Companies, and a number of water producers in the area. She explains that they objected on the basis of the District's groundwater charge, currently set at \$6.05 for non-agricultural water, and charged to every entity that extracts water to fund the District's groundwater replenishment. She says that does not change the amount of water producers can take out of the Basin—that is defined by the adjudication. She says there was an agreement signed between the District and the City of San Bernardino to allow the annexation to move forward. Ms. McDonald reports that the District has indicated that it wants to pursue annexation of the balance of its sphere and she says probably the same objections will come from the water producers since the bulk of the extraction is for the City of Riverside. She notes that the District receives substantial revenues from that charge, which is set annually. Commissioner Nuaimi asks how that groundwater charge would be impacted in a consolidation. Ms. McDonald responds that she does not believe the SBVMWD or the Flood Control District have the ability to charge a groundwater charge and says that through the consolidation, it would need to be determined what type of district the entity would be. She says if the district would be a municipal water district, which has the largest range of powers, that charge would disappear.

Vice Chairman Colven opens the public hearing and calls on Lawrence Libeu, General Manager of the SBVWCD.

Mr. Libeu compliments staff on an excellent report. He says there is the assumption that SBVMWD would consolidate SBVWCD, but he says SBVWCD would love to have SBVMWD consolidate with them. He says they are satisfied with their sphere and do not see a need to increase its size. He discusses that the battles and wars of the last 20 years between the local agencies have been set aside and says they are all partners within the Bunker Hill Basin, working for the common goal of what is best for the public and putting to use the natural water either in the Santa Ana River or Mill Creek for the maximum beneficial use. He discusses that there is an Upper Santa Ana River group, a Basin management subcommittee for that group, and a high groundwater committee that all meet monthly and he says the SBVWCD is active in those groups. He points out that the District recently signed a contract to develop a model for a demonstration program for groundwater recharge and basin management, along with the SBVMWD, the East Valley Water District, the City of Redlands and the Northfork Water Agency. He says he appreciates Commissioner Hansberger's comments on the District's ponds and what the District does and he discusses that they are a "quiet agency" and that everything they do is based on a natural basis. He says that the only thing that has disturbed them was the construction of the Seven Oaks Dam, which left a pit two miles long by one mile wide and 40 feet deep, and says the District is working with the Corps of Engineers and other local agencies to rehabilitate that Basin and put it back to beneficial use for groundwater recharge. He says there is a need for all of the agencies and he feels they need to all remain independent. He says they are willing to look at the void along the Santa Ana River but says that is "not on their radar screen" right now and they are happy with their sphere.

Mr. Libeu discusses that about six or eight weeks ago, the District was asked by the Flood Control District to get involved in flood control activities because of a problem at the Prado Dam where too much water in the Santa Ana River was going down there and there was a leak in the Dam. He says the District was putting the water that was released out of the Seven Oaks Dam back into the ground. He reports the District is working with the Supervisor, the Corps of Engineers and Congress to do something about the water quality issue behind the Dam, but he points out that if the District had not been there, the water behind that Dam being released would have gone on down the stream to Prado Dam or further down into Orange County. He says the District has been taking water that other local agencies cannot take because of water quality. He says the District is constantly in contact with and meets on a weekly basis with the Flood Control people in this County and Riverside and Orange Counties. Mr. Libeu reports that the water quality of Mill Creek is excellent and discusses that the District is diverting water from Mill Creek

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and sending it to the City of Redlands because that City has been unable to take water from the Seven Oaks Dam. He discusses that the District has an outreach program to spread the word about what it does. He says the District has nothing to do with how property taxes are identified on the tax bill. He says the District only collects \$24,000 a year in property tax revenue, pointing out that the two main means of revenue for the District are the assessments of \$6.05 per acre foot for non-agricultural water and \$1.65 per acre foot for agricultural water. Commissioner Sedano points out that the District also receives money from mining. Mr. Libeu says they do receive mining royalties and reports that this year the royalties will be somewhere around \$800,000. He discusses the Wash Land Management and Habitat Conservation Plan. He says the District appreciates and agrees with staff's expanded definition of its functions and services. He says the only one they marginally have a problem with, the one the District is not really involved in yet, is parks and recreation; but he adds he has some ideas about creating some parks and open space.

Commissioner Luellig says one of the biggest frustrations for the public is multiple layers of government and he says the Commission is charged with trying to eliminate those layers. He asks what is the disadvantage Mr. Libeu sees with consolidation. Mr. Libeu says he has not thought about it in a lot of detail but he points out that the disciplines of the two Districts are different. He says the SBVMWD just diverts water, while the SBVMWD is a pipes and pumping plant conveyance, infrastructure type of organization. He says for either District to consolidate the other would be changing the discipline. He notes that there are several WCDs in the State and says they feel that water conservation is a single activity that should be separate from transmitting and selling water. He says there is a total difference in operational philosophy and a total political difference in the boards of directors. Commissioner Luellig apologizes for putting Mr. Libeu on the spot but, he says the Commission will want to hear from the agencies what the disadvantages of consolidation would be.

Commissioner Cox asks whether the SBVMWD overlays the area of the Santa Ana River that is excluded by the SBVMWD. Ms. McDonald says that it does. Commissioner Cox asks whether it is the SBVMWD that governs the groundwater extraction in that area. Ms. McDonald explains that the SBVMWD has that responsibility in that area and says it administers the maintenance of flows through the Santa Ana River on through Riverside County and into Orange County through the 1969 Judgment. She notes that Western Municipal Water District and SBVMWD act as watermasters as the water flows down into Orange County and she says those Districts do overlay that entire area. Commissioner Cox says she sees that as a crucial part to managing that watershed in the upper river system. She asks if the watermaster has a regional water management plan or an integrated groundwater management plan for this area and, if so, how the mission of the SBVMWD is factored into that plan. Ms. McDonald responds that she cannot answer that specifically since that has not been reviewed; but she says she assumes that there is an overall masterplan through the SBVMWD that addresses that and takes into account the water percolation of the SBVMWD. Commissioner Cox asks whether staff anticipates that to be one of the areas that will be reviewed if this is continued. Ms. McDonald says that if the Commission wishes to have additional information on consolidation, that question can specifically be asked in a more technical sense. Commissioner Cox says she thinks that will be important information for the Commission to review.

Commissioner Hansberger says Commissioner Luellig's question to Mr. Libeu is appropriate, discussing that almost every Governor of California has put together a commission to look at this issue, with the assumption that there are too many government agencies and too many districts and their number should be reduced. He says that many times the conclusion has been that some single-purpose districts do what they do more efficiently and less expensively than if they were a part of another agency because of the focus of their task and their low overhead in doing it. He says this is a hard question to get to. Ms. McDonald says this was discussed by the Commission on Local Governance for the 21<sup>st</sup> Century (hereafter CLG21); is part of the reason why Commissions ended up with the responsibility for service reviews as an impartial body to sit and review boundaries for agencies; and is why the CLG21 thought one of the factors to be reviewed should be rate restructuring.

Commissioner Gonzales discusses that if they do not move forward to create very distinct territorial lines and district boundaries, she believes there will be havoc with all the development that is coming in.

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Commissioner Sedano moves staff recommendation to continue this hearing to May 18, 2005. Commissioner Williams says she will second the motion, but wants to be sure that staff reviews questions related to all the issues brought up today. Ms. McDonald says part of the staff recommendation is that the water producers in the area specifically be notified so that a full range of responses are received regarding the potential for consolidation and the advantages or disadvantages that may occur with that process. Commissioner Sedano says May 18 may be soon and Ms. McDonald says that in looking at the agendas, June would be better. Commissioner Sedano amends his motion to continue the hearing to June 15, 2005, with concurrence of Commissioner Williams.

Vice Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Cox, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead), Pearson (Sedano voting in his stead).

**CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT AND ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT (FOR FONTANA DEVELOPMENT CODE UPDATE) ADOPTED BY CITY OF FONTANA FOR FONTANA GENERAL PLAN UPDATE (STATE CLEARINGHOUSE NO. 2003031083), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2975; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 2975 – CITY OF FONTANA ANNEXATION NO. 159 – APPROVE STAFF RECOMMENDATION**

Legal Counsel Clark Alsop has a conflict on this item as he is also the City Attorney for the City of Fontana. He leaves the hearing at 10:05 a.m. The Commission is now represented by Special Counsel Jeffrey Goldfarb of Rutan and Tucker.

LAFCO conducts a public hearing to consider an application submitted by the City of Fontana (hereinafter “the City”) to annex approximately 4.90+/- acres generally located on the east side of Laurel Avenue, south of the natural extension of Ivy Street (approximately 585 feet south of Foothill Boulevard), approximately 100 feet west of Frankfort Avenue and approximately 125 feet north of Upland Avenue. Notice of this hearing has been advertised as required by law through publication in The Sun and the Fontana Herald News, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals requesting mailed notice and landowners and registered voters pursuant to State law and Commission policy.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald points out the study area on the map and shows pictures of the annexation area on the powerpoint display, stating that the area is primarily vacant, with four existing single-family residential units fronting Laurel Avenue. She reports that this application was submitted in response to a proposed subdivision, Tentative Tract 16620, which was reviewed and approved by the City for the creation of 12 lots on the 3.20 acre parcel, which comprises the eastern two-thirds of the proposal. She notes that staff had some concerns about the boundaries because the southerly and easterly boundaries use parcel lines as their definition. She points out, however, that the 12 lots will extend Ivy Avenue down into the area, providing easy access and a clear definition for service providers. As outlined in the staff report, Ms. McDonald says the City’s General Plan Update and pre-zoning of its sphere of influence assigned the area a land use designation of R-SF (single-family residential, 7,200 sq. ft. minimum lot size) and says the City’s pre-zoning of the area is designated as R-1 (single-family residential that allows for a minimum lot size of 6,000 sq. ft., with the average lot size set at 7,200 sq. ft.).

Ms. McDonald reports that the City’s Plan for Service, a copy of which is attached to the staff report, indicates that revenues from the property tax transfer and the anticipated Community Facilities District will be sufficient to fund the on-going operation and maintenance for various City services. She notes that there will be no change in the fire protection service provider, which is the Central Valley Fire Protection District, or in the water service provider, the Fontana Water Company. She says sewage collection services are anticipated to be extended to the proposed Tentative Tract 16620 and says law enforcement will shift from the County Sheriff to the City Police Department.

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(It is noted that Commissioner Cox leaves the hearing at 10:10 a.m.)

Ms. McDonald discusses the environmental review process for this proposal, explaining that the City prepared a Final Environmental Impact Report (hereinafter "FEIR") for its General Plan Update and an Addendum to the FEIR for the pre-zoning of its sphere of influence. She says the Commission's Environmental Consultant, Tom Dodson, has determined that the City documents are adequate for the Commission's use and recommends that the actions listed in the staff report be taken. She notes that these documents will be used by the Commission for the City's upcoming annexations. She points out that the three reasons the City has indicated for the proposed annexation are outlined in the staff report and says staff supports approval of this proposal because the annexation area will benefit from the municipal services that can be extended more effectively by the City.

Ms. McDonald says the findings required by State law and commission policy are outlined in the staff report and are made a part of the record by their reference herein. She says the staff recommendation is listed on pages one and two of the staff report and include that the Commission: (1) take the actions listed with respect to the environmental review; (2) approve LAFCO 2975, including the standard conditions of approval; and (3) adopt LAFCO Resolution No. 2867 setting forth the Commission's findings, determinations and conditions of approval concerning this proposal.

Commissioner Colven asks if any letters or comments from landowners have been received subsequent to the staff report. Ms. McDonald responds that property owners along Laurel Avenue may be present this morning to express opposition to being annexed.

Commissioner Hansberger asks why this small annexation is being considered rather than the entire island. Ms. McDonald says the City can best answer that but says she assumes that, due to the development of the Tentative Tract, there is a need for City services. She adds that the City has been admonished in the past to look at the most effective and efficient boundaries for the extension of its services. She says that at the workshop on March 31 the Commission will look at the balance of the island areas and whether they meet the criteria for substantially surrounded. Commissioner Hansberger says he will not be at that workshop; he says piecemeal annexations have not been healthy in the past; and that anything that can be done to avoid them should be considered. Commissioner Nuaimi comments that in the City's analysis, he believes that area is 75% surrounded and he says the entire island area on the east side of the City ends up qualifying under the island annexation provisions. Commissioner Hansberger again asks why the City does not wait and make a determination on the larger island issues. Ms. McDonald responds that she thinks the property owner of the Tentative Tract would object to the delay because his project has been in the process for quite some time. She adds that she is aware of the City's commitment to move forward with the annexation of the island areas to resolve the City's service provision problems. She asks whether Commissioner Hansberger wants to continue this annexation until the City initiates annexation of its islands. He responds that he does not believe the Commission desires that. He says he does not want to see a series of piecemeal annexations from any entity and wants to look at the big picture. He adds, however, that he does not feel it is too unsafe to proceed with this annexation knowing that the bigger question will be before the Commission soon.

Commissioner Nuaimi says he respects Commissioner Hansberger's comments and hopes this will be the last of the small annexations. He says this proposal provides an opportunity for in-fill development to bring 12 lots and infrastructure to an area currently without that. He says the property owner has been going through this process for some time and is looking to be able to move forward. He says the City will be very aggressive when it comes to island annexations.

Commissioner Gonzales comments that she believes this proposal should move forward since it has been in the works for some time; but she says that, speaking from the County's end, the situation of trying to provide services to islands is out of control. She says that when residents have to make a complaint, it is always a burden on them to know whether to call the County or a city. She says this is a wise attempt to square off boundaries, but says there needs to be a good outreach program to homeowners.



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Vice Chairman Colven opens the public hearing and calls on those wishing to speak.

Jean Mitre, a homeowner within the annexation area for 40 years, speaks in opposition to annexation, stating that she moved there to live in the country and wants the area to stay in the County. Mrs. Mitre says the residents know who to call for services; their taxes are low; and they are on cesspools or septic tanks. She says she owns the biggest lot that is to be annexed and says all four of her neighbors want to stay in the County. She says she is for the people building the tract, but she says the other property owners do not want to be annexed. She says the newspaper has indicated that the vote of the people will not count and that they will be annexed by the City. She says the people have a constitutional right to vote and that their votes should be counted.

Commissioner Hansberger asks whether there are any residents within the annexation area. Ms. McDonald responds that there are four developed houses in the area and says there are two registered voters, making the proposal legally uninhabited. She says the protest will be based only on land value against the current assessment roll and says the annexation will be terminated if protest is received from landowners owning 50% or more of the value of land. She points out that the question is what the land value of the four developed parcels is versus the vacant land. Commissioner Hansberger says the speakers need to tell the Commission whether they live in or adjacent to the annexation area. Mrs. Mitre states that she owns the largest lot within the annexation area. She asks whether their protest will hold up the other property owner from building. Commissioner Hansberger says it could if the annexation does not go forward.

Special Counsel Jeffrey Goldfarb comments that all the property owners will have a vote, which will be based on land value; and he says if a majority are in opposition, the annexation will not go forward. Mrs. Mitre says those in opposition do not own a majority of the land value. Mr. Goldfarb says that probably is the case; that their vote will count, but they may not have a majority to terminate annexation.

Commissioner Luellig asks Mrs. Mitre to discuss specific reasons why she objects to being annexed. He asks her what the difference is between the City providing her services and the County providing her services, noting that the County has to maneuver through the Cities of Fontana and Rialto to reach her property. Mrs. Mitre says she has lived in the County for 40 years; that the County has a different standard than the City regarding animals on her property; and that she heard a permit would be required from the City if she wanted to put a tree in her front yard. She asks why she should have to pay for sewer if she is not going to hook up to the City's sewer system. Commissioner Luellig comments that a lot of rumors go around and he says cities do not normally require a property to be hooked up to the sewer system upon annexation. Commissioner Nuaimi says that Commissioner Luellig is right and he says that during the City's hearing process on this project, Mrs. Mitre came and initially spoke in favor. However, he says she then spoke in opposition because the developer told her that she would have to pay for a sewer line to her property. He says that the City then told the developer that he would have to put the sewer line in the right of way to the properties and could not force Mrs. Mitre to connect to it. He says people often have the notion that if the sewer is there, they have to connect to it, which he says is not the case. Mrs. Mitre discusses various information she was told by the developer. Commissioner Luellig says there is a need for rumor control and the property owners need to know exactly what is involved with an annexation. He says the property taxes will be the same whether the property is in the County or the City. He says in some cases there may be an advantage to eventually hook up to sewer as far as property value; but he adds that is a decision for the property owner. He says it is important that during the process someone from the Commission be designated to answer questions so property owners will know what is true and what is not true. He tells Mrs. Mitre that even if she is annexed, she can have her country living and again asks why she objects if there is no difference between living in the City or the County. Mrs. Mitre says the City would not allow her to have chickens on her property.

Commissioner Gonzales comments that regarding animals, if Mrs. Mitre has a legally existing use for her lot size at the present time, she will automatically be guaranteed that legal use in the City upon annexation. She says the only reasons she would be prohibited from keeping her animals upon annexation would be if the number she has is not a legal use in the County or she stops having the

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animals she has. She explains that property taxes do not increase, but where the money is directed changes.

Bobbie Holderfield states that she lives across the street on Ivy Street and figures that if these properties are annexed into the City, the City will be coming after her property. She says she has lived in the County since 1965 and is happy with the County.

Garbis Kahkejian, President of United Mission of America, Inc., states they own 2.31 acres just north of the proposed annexation area; that their property is bordered by Foothill Blvd. on the north and the proposed annexation on the south. He says the lot is vacant, with the north half of the lot zoned commercial and the bottom half residential. Mr. Kahkejian asks whether there will be any easements from the south for possible access to the lower residential portion of their lot. He also asks if the Commission has the jurisdiction to change their lot from residential to commercial and, if not, whether the Commission can recommend who can make those changes. First, Ms. McDonald says questions regarding easements for access should be asked of the City's Public Works or Land Use Planning Departments. Regarding his second question, she says the Commission is precluded from making recommendations for potential land uses and has no jurisdiction over an area already within City boundaries.

Cecilia Lopez-Henderson, Annexation Program Coordinator for the City, says they hope this annexation can move forward. She points out that the applicant has been waiting since Summer of last year and she says the issue of the island area is a bigger issue to be discussed. In answer to Mr. Kahkejian, she says her understanding is that there is no easement there. She says this was covered through the City's Planning staff; that the project was approved by the Planning Commission as it is before the Commission today; and that changes would have to go back to the Planning Commission to be addressed. Mr. Kahkejian says that the lower portion of their lot will be completely blocked in for future development, with no access. He asks how they can proceed to develop the lower portion of the property if it all cannot be converted to commercial property. Ms. Henderson says it looks like he is talking about a zone change and General Plan Amendment. She says she will meet with him today, along with staff from the Engineering and Planning Departments, to address his concerns.

Commissioner Hansberger asks why this boundary was chosen and why the five lots facing Laurel Avenue were included, rather than stopping at the back lot line of the parcels. Ms. Henderson points out on the overhead display map the two parcels owned by the developer, Mr. Melendez,--the largest parcel and the one parcel that splits the five parcels on the west side of the annexation area. She says that in order to bring in his proposal, the boundaries had to be squared off, and says the City worked closely with Mr. Melendez to have a boundary that worked for his project and for LAFCO as far as having orderly boundaries. Commissioner Hansberger comments that since access will be taken from Ivy Street and not Laurel Avenue, it would not have been necessary to include that parcel just because it is also owned by the developer. Ms. Henderson says the Planning Commission placed a condition that a home be built on that center parcel. Commissioner Hansberger comments that the City could have changed the annexation boundary to the back lot line and Ms. Henderson says that it correct. Commissioner Nuaimi explains that the City Planning staff was trying to avoid a tract map of 10-12 homes with one vacant lot in the middle and wanted the developer who owned that parcel to develop everything. Commissioner Hansberger discusses that he used to favor annexations to the center of streets, but he says it was pointed out to him that services typically come from the front of a lot and not the back of the lot; and, when the center of the street is the boundary, people on opposite sides of the same street are in different jurisdictions. He says if the back lot line is used, people facing on the same street have common service providers.

Vice Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Sedano moves approval of staff recommendation, seconded by Commissioner Nuaimi. Vice Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Curatalo, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None.

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Abstain: None. Absent: Biane (Gonzales voting in his stead), Cox (Curatalo voting in her stead) and Pearson (Sedano voting in his stead).

Regarding Commissioner Hansberger's concerns about piecemeal annexations, Commissioner Sedano comments that (former Commissioner) Jim Bagley hammered on that every time the City of Fontana came to the Commission with a piecemeal annexation. He says the Commissioners are all on the same page. Commissioner Hansberger says he will keep pounding on this issue because in the 70's, when many of these problems were created, he objected to the creation of many of these islands.

Commissioner Nuaimi says that the change in acreage for island annexations from 75 to 150 acres happened after this application was in the works. He also discusses the comment made that people's constitutional rights are violated through these island annexations. He says people have the notion that it is a constitutional right whether or not to belong to a municipality. He says, however, that is a statutory right established by the State and allocated to LAFCO, so it is not a constitutional or property right as he understands it. He says the City is not trying to take property but is trying to efficiently deliver municipal services to its defined sphere of influence. He says he respects Commissioner Luellig's interest in trying to find out the reason for opposition to annexation. He says that in this case, it was a "souring" that occurred when the developer changed his tune midway through the process and then the City changed his tune back, but there was already a "sour note".

(It is noted that Legal Counsel Clark Alsop returns to the hearing and Special Counsel Jeffrey Goldfarb leaves the hearing at 10:52 a.m.)

**CONSIDERATION OF WAIVER OF LEGAL COUNSEL CONFLICT FOR COUNTY FIRE REORGANIZATION - APPROVE STAFF RECOMMENDATION**

LAFCO considers Legal Counsel Clark Alsop's letter regarding a waiver of legal counsel conflict. Notice of this consideration has been advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. Individual mailed notice was provided to affected and interested agencies and County departments.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says that Mr. Alsop is a partner in the firm of Best Best and Krieger and is also the City Attorney for the City of Fontana. She says that given the number of questions that have already come up on the proposed County Fire reorganization, staff wanted assurance that the question of legal representation was resolved up front. She says Mr. Alsop has provided a letter requesting that the Commission waive legal counsel conflict on this matter. She reports that the City was also presented with the same letter and has signed it. She says she has broached this question with a number of County representatives and none have indicated a concern regarding Mr. Alsop's representation. She explains that it is critical that this question be resolved since the advice of Legal Counsel will be needed prior to actual submission of the proposed reorganization. Ms. McDonald says the staff recommendation is that the Commission authorize the Chairman to sign the waiver letter, if it is supported by the Commission.

Commissioner Hansberger moves approval of staff recommendation, seconded by Commissioner Williams. Vice Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Curatalo, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead), Cox (Curatalo voting in her stead) and Pearson (Sedano voting in his stead).

**AUTHORIZATION FOR RECRUITMENT OF LAFCO ANALYST - APPROVE STAFF RECOMMENDATION**

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LAFCO considers the authorization for recruitment of a LAFCO Analyst. Notice of this consideration has been advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. Individual mailed notice was provided to affected and interested agencies and County departments.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says that during the Executive Officer's report at the February hearing, she indicated that staff felt a Student Intern would be the optimum choice for assistance with the service reviews. She says that with the ever-increasing workload of the Commission and the proposed County Fire reorganization, it has been determined that another Analyst is needed. The staff recommendation is that the Commission: (1) authorize the addition of a LAFCO Analyst position at Salary Range 56; (2) authorize the Executive Officer and Human Resources Consultant to recruit to fill the position at a cost not to exceed \$5,000; and (3) authorize the transfer of funding in an amount of \$14,094 from Reserves Account #6025 to Salary Account #1010 to accommodate anticipated payment of salaries and benefits for the balance of Fiscal Year 2004-05.

Commissioner Nuaimi moves approval of staff recommendation, seconded by Commissioner Hansberger. Vice Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Curatalo, Gonzales, Hansberger, Nuaimi, Sedano, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead), Cox (Curatalo voting in her stead) and Pearson (Sedano voting in his stead).

**PENDING LEGISLATION**

No pending legislation report is presented.

**EXECUTIVE OFFICER'S ORAL REPORT**

Ms. McDonald says the Commission has been presented this morning with a request from Riverside LAFCO to assume principal county status for an annexation to the Yucaipa Valley Water District (hereinafter YVWD). She explains that Riverside LAFCO is required to do the sphere of influence amendment exchange between the Beaumont-Cherry Valley Water District and YVWD, and she says that annexation of the same territory to YVWD is also proposed. She says staff has no objection to this and requests the Commission's concurrence to allow Riverside LAFCO to process the annexation, rather than have the sphere proposal processed by Riverside LAFCO and the annexation processed by this Commission.

The Commission indicates unanimous concurrence to this request.

Ms. McDonald reports that this morning the Commission has been presented with an outline of the "Discussion of General Plan Update Sphere of Influence Land Use Policy Positions", newspaper articles related to island annexations and the County Fire study and information on the CALAFCO Annual Conference. She reminds the Commission that Form 700s are due April 1.

Ms. McDonald says there will be a workshop held on March 31 for discussion of island annexations. She says the workshop will begin with a "LAFCO 101" presentation at 1:00 p.m. by Dan Schwarz, Deputy Executive Officer and Legislative Chair for CALAFCO and Executive Officer of Napa LAFCO. She reports that a supplemental agenda item has been added to the workshop for consideration of a request for exemption from the provisions of Government Code Section 56133 from the Big Bear City Community Services District to assume ambulance service from the Big Bear Healthcare District. She says that matter must be resolved by April 1.

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Ms. McDonald reports that on the April 20 agenda will be the continued service review for County Service Area SL-1, which she says may need to be continued again, the continued Fontana annexation, the preliminary review of budget matters, and annexations to the Cities of Upland, Highland and Montclair.

Ms. McDonald reports that on the May 18 agenda will be the continued formation of County Service Area 120, the review of the Final Budget and Fee Schedule, the dissolution of the Monte Vista Fire Protection District and possibly the dissolution of County Service Area 110. She reports that an annexation to the City of Rialto in the community of Bloomington has been received and says another one will be coming in. She says nothing has been heard from the Bloomington Incorporation Commission regarding the payment of fees for the sphere review. She says she has been working with the City of Victorville regarding the dissolution of its three subsidiary districts and she made a presentation to the Victor Valley Water District regarding consolidation. She notes that there are rumors going around in the north desert regarding the potential consolidation of the two water districts and then becoming a subsidiary district of the City of Victorville. She reports that the Helendale Community Services District formation, as well as the Phelan/Pinon Hills Community Services District formation are moving forward. She says she heard from representatives of the Oak Hills community that they may form an independent County water district.

Commissioner Hansberger asks whether anything has been heard from the Lake Arrowhead community about incorporation. Ms. McDonalds says no, stating the community did not like the current requirements of LAFCO law that they do not control the Comprehensive Fiscal Analysis; that application is made to LAFCO and LAFCO will determine the boundaries for the Comprehensive Fiscal Analysis and the community will pay. She points out that with the removal of the ability for newly-incorporated cities to participate in Motor Vehicle In-Lieu fees, with the exception of the Lake Arrowhead community, she does not believe that the rest of the defined unincorporated communities will qualify for incorporation.

Ms. McDonald reports that staff hopes to have the kick-off of the service reviews for the 43 north desert agencies during April.

**COMMISSIONER COMMENTS**

Commissioner Sedano comments that he would like to thank Commissioner Pearson for being absent today so that was able to vote.

Commissioner Luellig says the City of Barstow decided to expand its Planning Commission to include alternates, modeling it after LAFCO, because of conflicts of interest. He says they have been provided with a ruling from a 1999 Attorney General opinion that indicates that alternates cannot participate in Closed Session issues.

Legal Counsel Clark Alsop states that this Commission has discussed that opinion before and disagrees with it. He says that some LAFCOs follow that opinion and that some do not. He says he believes it is a poorly-reasoned decision and does not make sense. Ms. McDonald reports that this Commission has a specific policy regarding the participation of alternates in Closed Sessions. Commissioner Hansberger comments that an Attorney General opinion is not law. Mr. Alsop comments that the Attorney General's office is just a large law firm; he says that courts give deference to their positions, but that they are not court opinions.

**COMMENTS FROM THE PUBLIC**

Vice Chairman Colven calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS  
ADJOURNED AT 11:05 A.M.**

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**ATTEST:**

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**DEBBY CHAMBERLIN**  
Clerk to the Commission

**LOCAL AGENCY FORMATION COMMISSION**

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**PAUL BIANE, Chairman**